

**WASHINGTON STATE DEPARTMENT OF COMMUNITY, TRADE AND ECONOMIC DEVELOPMENT
2005-07 EARLY CHILDHOOD EDUCATION AND ASSISTANCE PROGRAM CONTRACT**

SECTION 1 – PREAMBLE

This CONTRACT, entered into by (CONTRACTOR name) (hereinafter referred to as the CONTRACTOR), and the Department of Community, Trade and Economic Development (hereinafter referred to as the DEPARTMENT), WITNESSES THAT:

WHEREAS, the DEPARTMENT has the responsibility under RCW 28A.215.100-200 and WAC 365-170 to provide local early childhood education and assistance programs serving eligible children and families.

WHEREAS, the DEPARTMENT has selected the CONTRACTOR to deliver comprehensive ECEAP preschool services within the required components of the ECEAP Performance Standards and WAC Chapter 365-170 that apply to administration, education, health services, family support, and parent involvement. These services shall be targeted to eligible children who, without special assistance, are at risk of failure in the public school system.

THEREFORE, the parties mutually agree to the following terms and conditions:

SPECIAL TERMS AND CONDITIONS

SECTION 2 – DEFINITIONS

Terms used throughout this CONTRACT are defined below:

"DEPARTMENT" means the Department of Community, Trade and Economic Development, or its successor DEPARTMENT, of the state of Washington, any division, section, office, unit, or other entity of that DEPARTMENT or any of the officers or other officials lawfully representing the DEPARTMENT.

"ECEAP" means the Early Childhood Education and Assistance Program, administered by the Department of Community, Trade and Economic Development. ECEAP is a "whole-child," comprehensive, family-focused preschool program designed to help low-income and at-risk children and their families succeed in school and life.

"CONTRACTOR" means that department, firm, organization, provider, individual, or other entity performing services under this CONTRACT. It shall include any subcontractor retained by the CONTRACTOR, as permitted under the terms of this CONTRACT.

"SUBCONTRACTOR" means an individual or entity who is not an employee of the CONTRACTOR and is performing all or part of the services under this CONTRACT through a written agreement with the CONTRACTOR.

SECTION 3 – ENTIRE AGREEMENT

This CONTRACT, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this CONTRACT shall be deemed to exist or be binding. The Exhibits to this CONTRACT are as follows:

EXHIBIT A	Budget Detail Worksheet
EXHIBIT B	General Terms and Conditions
EXHIBIT C	ECEAP Performance Standards
EXHIBIT D	2005-07 ECEAP Funding Renewal Application

SECTION 4 – CONTRACT PERIOD

The effective date of this CONTRACT shall be July 1, 2005. This CONTRACT shall terminate on June 30, 2007, except for any remaining obligations of the CONTRACTOR as may exist as referenced in the "Required Reports" section of this CONTRACT.

SECTION 5 – ORDER OF PRECEDENCE

In the event of conflicting provisions within this CONTRACT, the conflict will be resolved by giving precedence in the following order:

1. Applicable federal and state of Washington statutes and regulations.
2. Special Terms and Conditions contained in this Agreement.
3. General Terms and Conditions contained in this Agreement.
4. Exhibits or other documents incorporated by reference.

SECTION 6 – STATEMENT OF WORK

The CONTRACTOR shall provide early childhood education and assistance services that are in compliance with the terms and conditions of this CONTRACT and the ECEAP Performance Standards and described in the 2005-07 ECEAP Funding Renewal Application. Program and fiscal performance will be monitored and evaluated monthly by the assigned DEPARTMENT staff based on, but not limited to, child enrollment, monthly program activity, and monthly requests for reimbursement. At least once annually, the DEPARTMENT shall request back-up documentation of monthly expenditures. DEPARTMENT staff will also monitor and evaluate program performance during on-site visits and program reviews.

Approval from the DEPARTMENT must be obtained before any change is implemented in the CONTRACTOR's service delivery system, site location, enrollment level, and service area.

The CONTRACTOR certifies that work to be performed under this CONTRACT does not duplicate any work to be charged against any other CONTRACT, subcontract, or other funding source.

Exhibit B contains the General Terms and Conditions governing work to be performed under this CONTRACT, the nature of the working relationship between the DEPARTMENT and the CONTRACTOR, and specific obligations of both parties.

SECTION 7 – FUNDING

The DEPARTMENT shall pay an amount not to exceed \$_____ for costs incurred for activities in the statement of work.

Funds unexpended in FY 2006 may not be transferred to the FY 2007 budget. Exhibit A contains budget detail for both fiscal years.

SECTION 8 – ALLOWABLE COSTS

Allowable use of state ECEAP funds shall include the following:

A. Administrative Costs

Administrative costs are directly associated with ECEAP administration, supervision, program management, and program development. These costs may include, but are not limited to, the costs of planning, coordination, program management, review of general program direction, administrative support, travel, and the costs of occupying and maintaining the space used for these purposes.

Administrative costs shall not exceed 15 percent of the annual base funding of the program budget identified in this CONTRACT.

B. Operational Costs

Operational costs are those required for direct service delivery of the required ECEAP components of education, health services, family support, and parent involvement. These operational program costs shall include, but not be limited to, the approved costs of personnel (salaries and benefits), supplies, travel, and the costs of occupying and maintaining the space used for these purposes.

C. Program Support Costs

- i. **Development and Training Funds:** As funding is available, costs shall be allocated to Development and Training funds that are directly associated with the specific education, development, and training needs of ECEAP staff and parents/caretakers of ECEAP children. Allowable costs include registration fees, materials/supplies associated with training, lodging, meals, and travel reimbursement, consultant fees and services, and other costs benefiting ECEAP staff and parents/caretakers. In the absence of local travel policies, Development and Training expenditures for travel, meals, and lodging shall comply with the state of Washington's travel regulations, or Federal travel

regulations if travel occurs outside the state of Washington. All Development and Training funds expenditures shall be documented and maintained on file at the CONTRACTOR's site.

- ii. One-Time Funds: Costs of a one-time nature that promote quality, target safety improvements and correction of items in self-assessments or program reviews, and implementation of ECEAP Performance Standards. One-time funding costs are not considered part of base funding or continuing operational funding. One-time funding is granted as may be available and as determined by the DEPARTMENT.

SECTION 9 – BASIS FOR REIMBURSEMENT

Billing Procedures/Payments

Allowable program expenditures shall be reimbursed upon approval of an invoice and submittal of program activity and child enrollment data for the month in which reimbursement is being requested. The CONTRACTOR shall use the Monthly Expenditure Report and Request for Reimbursement Form and submit requests within 15 days following the month in which costs were incurred. Payment shall be considered timely if received by the CONTRACTOR within 10 business days after the DEPARTMENT receives the invoice.

The DEPARTMENT shall make no payments in advance of services to be provided under this CONTRACT.

Equipment and Non-Expendable Purchases

Prior approval from the DEPARTMENT is required by the CONTRACTOR for the purchase of any item of non-expendable property with a unit cost of \$5,000 or greater. Purchase requests will be considered until June 10th of each fiscal year, provided funds are available and the item can be delivered by June 30th of the current fiscal year.

SECTION 10 – BUDGET REVISIONS

The CONTRACTOR's Budget Detail Sheet is provided as Exhibit A included with this CONTRACT. Proposed budget revisions shall be submitted to the DEPARTMENT electronically on the ECEAP Management System (EMS). The CONTRACTOR shall complete a budget revision for any of the following proposed budget changes:

1. Line item transfers of greater than 10 percent of the total amount of the Operations category or 30% of the total amount of the Administration category within each fiscal year.
2. Proposed transfer of any funds from Operations to Administration category.
3. Proposed transfer of any funds out of, or into, the Building Alterations line item.

Budget revisions shall not be effective unless approved by the DEPARTMENT. If the budget revision is approved, a CONTRACT amendment will be provided to the CONTRACTOR.

SECTION 11 – REQUIRED REPORTS

The CONTRACTOR shall submit required reports by the due dates specified by the DEPARTMENT. These reports include, but are not limited to:

REPORT	DATE DUE
1. Monthly Expenditure Report and Request for Reimbursement	Submitted via the ECEAP Management System (EMS) by the 15 th of the month following the month in which costs were incurred, except for the June Monthly Expenditure Report and Request for Reimbursement in each fiscal year, which shall be due per item 2 below.
2. June Monthly Expenditure Report and Request for Reimbursement	July 10 th of each fiscal year, or as instructed by the DEPARTMENT.
3. Child Enrollment Form (CEF)	Entered into EMS by the 15 th of the month following the month the child enrolled in or exited the program.
4. Program Activity Form (PAF)	Entered into EMS by the 15 th of the month following the month services were provided.
5. Program Information Form (PIF)	Entered into EMS as part of the ECEAP Funding Renewal Application and updated as changes occur.
6. Subcontractor Information Form (SIF)	Entered into EMS as part of the ECEAP Funding Renewal Application and updated as changes occur.
7. Self-Assessment	To be submitted by June 30 th of each year of the Biennium

	and 30 days prior to Program Review.
8. Back-Up Documentation of ECEAP Expenditures	To be submitted annually per DEPARTMENT instructions.
9. Certificate of Coverage or Letter of Coverage for either commercial insurance carriers, self-insured/liability pool, or self-insured risk management program.	To be submitted on June 30 th of each year of the Biennium.

The CONTRACTOR shall be obligated to submit required reports after the close of the CONTRACT period, during the transfer of obligations to another CONTRACTOR, or upon termination of the CONTRACT for any reason.

SECTION 12 – WRITTEN POLICIES AND PROCEDURES/DOCUMENTS ON FILE

Written policies and procedures, consistent with applicable federal and state regulations and ECEAP Performance Standards, shall be kept on file in the office of the CONTRACTOR and be available for review at the request of DEPARTMENT.

SECTION 13 – SIGNATURE AUTHORIZATION

The CONTRACTOR shall submit a Signature Authorization Form upon request from the DEPARTMENT. The Signature Authorization Form shall reflect those authorized to sign ECEAP Funding Renewal Applications, ECEAP Contracts, and Monthly Expenditure Reports and Requests for Reimbursement. Any changes to signature authority require an updated Signature Authorization Form be submitted to the DEPARTMENT.

SECTION 14 – INSURANCE

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages, or expenses arising from any negligent or intentional act or omission of the CONTRACTOR while performing under the terms of this CONTRACT.

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington, and shall name the state of Washington, its agents, and employees, as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The CONTRACTOR shall submit to the DEPARTMENT a certificate of insurance, which outlines the coverage and limits defined in this section. The CONTRACTOR shall submit renewal certificates annually as an end-of-year close-out report as set forth in the “Required Reports” section of this CONTRACT. The CONTRACTOR shall instruct the insurers to give the DEPARTMENT 30-days advance notice of any insurance cancellation.

The CONTRACTOR shall provide insurance coverage that shall be maintained in full force and effect during the term of this CONTRACT, as follows:

Commercial General Liability Insurance Policy – Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of CONTRACT activity but no less than \$1,000,000 per occurrence.

Automobile Liability – In the event that services delivered pursuant to this CONTRACT involve the use of vehicles owned or operated by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance – The CONTRACTOR shall maintain Professional Liability or Errors and Omissions Insurance. The CONTRACTOR shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all program activities by the CONTRACTOR and licensed staff employed or under CONTRACT to the CONTRACTOR. The state of Washington, its agents, and employees need *not* be named as additional insured under this policy.

Self-Insured/Liability Pool or Self-Insured Risk Management Program – With prior approval from the DEPARTMENT, the CONTRACTOR may provide the coverage above under a self-insured/liability pool or self-insured risk management program. In order to obtain permission from the DEPARTMENT, the CONTRACTOR shall provide: (1) a description of its self-insurance program, and (2) a certificate and/or letter of coverage that outlines coverage limits and deductibles. All self-insured risk management programs or self-insured/liability pool financial reports must comply with Generally Accepted Accounting Principles (GAAP) and adhere to accounting standards promulgated by: 1) Governmental Accounting Standards Board (GASB), 2) Financial Accounting Standards Board (FASB), and 3) the Washington State Auditor’s annual instructions

for financial reporting. CONTRACTORS participating in joint risk pools shall maintain sufficient documentation to support the aggregate claim liability information reported on the balance sheet. For the term of the CONTRACT, the DEPARTMENT reserves the right to unilaterally amend the CONTRACT on 30 days notice to increase the minimum liability limits for the above coverage. The state of Washington, its agents, and employees need *not* be named as additional insured under a self-insured property/liability pool, if the pool is prohibited from naming third parties as additional insured.

SECTION 15 – ENROLLMENT

The CONTRACTOR, in performing services as described in the CONTRACT, shall implement procedures to ensure that funded slots for ECEAP are filled in a timely manner as required by the ECEAP Performance Standards. The CONTRACTOR shall ensure a monthly active enrollment of 95% of funded slots and at least 85% average daily attendance.

SECTION 16 – DSHS DATA SHARING AGREEMENT

The DEPARTMENT will annually provide confidential eligible client data, obtained from the Department of Social and Health Services (DSHS), to the CONTRACTOR. This data is to be used solely for ECEAP recruitment and enrollment purposes.

The CONTRACTOR shall ensure that all staff with access to the data sign a Notice of Non-Disclosure Form each year and submit a copy to the DEPARTMENT. The DEPARTMENT will provide an annual written reminder of non-disclosure requirements to all CONTRACTOR staff with access to the data.

The CONTRACTOR shall ensure protection of data from unauthorized physical or electronic access and that documents generated from this data are properly secured. The CONTRACTOR shall also ensure unused data in electronic or printed form is properly destroyed so that unauthorized individuals cannot access client information, and the data cannot be recovered.

Other confidential information maintained by the CONTRACTOR shall be subject to the Privacy section of this contract.

SECTION 17 – PARENT/CARETAKER ACCESS AND VOLUNTEERISM

The CONTRACTOR shall guarantee that parents/caretakers have unlimited access to their child during normal hours of provider operation and whenever the child is participating in program activities. Parents/caretakers must also have access to program providers whenever the child is in the care of the provider and/or during normal business hours. If a parent/caretaker is barred by a court from contact with their child, the CONTRACTOR shall comply with the court order. Parents/caretakers include biological or adoptive parents, legal stepparents, legal guardians, foster parents, and caretaker blood relatives with legal responsibility for the child.

In addition, in accordance with ECEAP Performance Standard 1.030, the CONTRACTOR shall ensure that no parent/caretaker is required to volunteer for ECEAP activities. The CONTRACTOR shall ensure that all parents/caretakers are encouraged to volunteer in ECEAP activities. Those parents/caretakers and community volunteers who participate in the ECEAP classrooms on a regular basis may only be allowed to volunteer upon (1) receipt of an acceptable criminal background check from appropriate law enforcement entities; and (2) receipt of training on state-required procedures for reporting alleged child abuse and/or neglect. An acceptable criminal background check means the volunteer has not been convicted of, or has charges pending for, crimes of child abuse or harm to another person.

**2005-07 ECEAP
GENERAL TERMS AND CONDITIONS**

ASSIGNMENT – This CONTRACT, or any claim arising under this CONTRACT, shall not be transferred or assigned by the CONTRACTOR without prior written consent of the DEPARTMENT.

ASSURANCES – The CONTRACTOR shall comply with all applicable laws, ordinances, codes, regulations, and policies of local, state, and federal governments, as now or hereafter amended.

CHANGES AND MODIFICATIONS – The DEPARTMENT may, at any time, by written notification to the CONTRACTOR, make changes within the general scope of the services to be performed under the CONTRACT. If the CONTRACTOR agrees to such changes, a written CONTRACT amendment reflecting such change shall be executed by both parties. An equitable adjustment in cost or period of performance or both may be made if required by the change. Any claim for adjustment in price or period of performance must be received within 30 days of the CONTRACTOR's receipt of the change notice. The DEPARTMENT may, however, receive and act upon any such claim at any time prior to final payment under the CONTRACT.

Failure to agree to any adjustment made under this section may be reviewed as provided in the "Disputes" section of this CONTRACT. Nothing in this section shall excuse the CONTRACTOR from proceeding with the CONTRACT as changed.

CHANGE IN STATUS – The CONTRACTOR agrees to notify the DEPARTMENT of any substantive change to its legal status, organizational structure, or fiscal reporting responsibility as soon as possible, but no later than 30 days after the change takes effect.

CONFLICT OF INTEREST – The DEPARTMENT may, in its sole discretion, by written notice to the CONTRACTOR, terminate this CONTRACT if it finds, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the CONTRACTOR in the procurement of or performance under this CONTRACT.

In the event this CONTRACT is terminated as provided above, the DEPARTMENT shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the CONTRACT by the CONTRACTOR. The rights and remedies of the DEPARTMENT provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the DEPARTMENT makes any determination under this section may be reviewed as provided in the "Disputes" section of this CONTRACT.

COVENANT AGAINST CONTINGENT FEES – The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for the purpose of securing business. The DEPARTMENT shall have the right, in the event of breach of this section by the CONTRACTOR, to annul this CONTRACT without liability or, in its discretion, to deduct from the CONTRACT price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.

DISPUTES – Except as otherwise provided in this CONTRACT, when a bona fide dispute arises between the parties and it cannot be resolved through discussion and negotiation, either party may request a dispute hearing. The parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by the DEPARTMENT, a representative appointed by the CONTRACTOR, and a third party mutually agreed upon by both parties. The team shall attempt, by majority vote, to resolve the dispute. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

DOCUMENTATION, MONITORING, AND AUDIT – During the CONTRACT period and following its termination, the CONTRACTOR shall follow Generally Accepted Accounting Principles and maintain books, records, documents, and other evidence that sufficiently and properly reflects all allowable costs expended in the performance of this CONTRACT. The Office of the State Auditor or any persons duly authorized by the DEPARTMENT shall have full access to and the right to inspect, excerpt, audit, or examine any of these materials at all reasonable times for a period of six years after termination of the CONTRACT. If any litigation claim or audit is started before the expiration of the six-year period, the records shall be retained until all litigation claims or audit findings involving the records have been resolved.

The CONTRACTOR shall submit two copies of its most recent audit report and management letter to the DEPARTMENT no later than nine months after the end of the CONTRACTOR's audit period. The CONTRACTOR shall submit a Corrective Action Plan for any audit findings to the DEPARTMENT. Costs of a required audit are an allowable expense.

GOVERNING LAW – This CONTRACT shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

INDEMNIFICATION – The CONTRACTOR agrees to defend, hold harmless, and indemnify the state of Washington and the DEPARTMENT, their officers, agents, employees, and assigns against any and all damages of claims from damages resulting or allegedly resulting from the CONTRACTOR's performance or lack of performance under the terms of this CONTRACT.

INDEPENDENT CAPACITY – The parties intend that an independent CONTRACTOR relationship will be created by this CONTRACT. The CONTRACTOR, and its employees or agents performing under this CONTRACT, are not employees or agents of the DEPARTMENT. The CONTRACTOR will not hold itself out as, nor claim to be, an officer or employee of the DEPARTMENT or of the state of Washington, nor will the CONTRACTOR make any claim of right, privilege, or benefit that would accrue to such employee under law.

INDUSTRIAL INSURANCE COVERAGE – The CONTRACTOR shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the CONTRACTOR fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the DEPARTMENT may collect from the CONTRACTOR the full amount payable to the Industrial Insurance accident fund and transmit the amount to the Department of Labor and Industries (L&I), Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the CONTRACTOR.

LICENSING AND ACCREDITATION STANDARDS – The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation, and registration requirements/standards necessary in the performance of this CONTRACT.

NONDISCRIMINATION – During the performance of this CONTRACT, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations, and policies. In the event of the CONTRACTOR's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this CONTRACT may be rescinded or terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further contracts with the DEPARTMENT. The CONTRACTOR shall, however, be given a reasonable time in which to correct this noncompliance. Any dispute of fact may be resolved in accordance with the "Disputes" section of this CONTRACT.

OVERPAYMENTS AND ASSERTION OF LIEN – In the event that the DEPARTMENT establishes overpayments or erroneous payments made to the CONTRACTOR under this CONTRACT, the DEPARTMENT may secure repayment, plus interest, if any, through the filing of a lien against the CONTRACTOR's real property, or by requiring the posting of a bond, assignment of deposit, or some other form of security acceptable to the DEPARTMENT.

PRIVACY – Personal information collected or acquired in connection with this CONTRACT shall be used solely for the purposes of this CONTRACT. The CONTRACTOR agrees not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons personal information without the express written consent of the DEPARTMENT or as provided by law. The CONTRACTOR agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to personal information.

Any breach of this section may result in termination of the CONTRACT. The CONTRACTOR agrees to indemnify and hold harmless the DEPARTMENT for any damages related to the CONTRACTOR's unauthorized use of personal information.

For the purpose of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a person's health, finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers, and other identifying numbers.

RECAPTURE PROVISIONS – In the event that the CONTRACTOR expends funds under this CONTRACT in violation of state laws and/or provisions of this CONTRACT, the DEPARTMENT reserves the right to recapture state funds in an amount equivalent to the extent of the noncompliance. Such right of recapture shall exist for a period of not to exceed six years following CONTRACT termination. Repayment by the CONTRACTOR of funds under this recapture provision shall occur within 30 days of demand. In the event that the DEPARTMENT is required to institute legal proceedings to enforce the recapture provision, the DEPARTMENT shall be entitled to its costs thereof, including reasonable attorney's fees.

RIGHT OF INSPECTION – The CONTRACTOR shall provide right of access to its facilities to the DEPARTMENT or any of its officers at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this CONTRACT on behalf of the DEPARTMENT. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the CONTRACTOR's conduct of business.

RIGHTS IN DATA – Unless otherwise provided, data that originates from this CONTRACT shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the DEPARTMENT. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

Data that is delivered under the CONTRACT, but that does not originate there from, shall be transferred to the DEPARTMENT with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided, that such license shall be limited to the extent which the CONTRACTOR has a right to grant such a license. The CONTRACTOR shall exert all reasonable effort to advise the DEPARTMENT, at the time of delivery of data furnished under this agreement, of all known or potential invasions of privacy contained therein and of any portion of such document, which was not produced in the performance of this agreement. The DEPARTMENT shall receive prompt written notice of each notice or claim of copyright infringement received by the CONTRACTOR with respect to any data delivered under this agreement. The DEPARTMENT shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

SEVERABILITY – The terms and conditions of this CONTRACT are severable. If any term or condition of this CONTRACT is held invalid by any court, such invalidity shall not affect the validity of the other terms and conditions of this CONTRACT.

SUBCONTRACTING – All subcontracts must be in writing. The subcontract shall expressly require the subcontractor to comply with all the obligations of the CONTRACTOR under this CONTRACT. The CONTRACTOR and the subcontractor shall both be responsible to the DEPARTMENT for full compliance of the subcontractor with the terms of this CONTRACT.

TERMINATION DUE TO CHANGE IN FUNDING – In the event state funding is withdrawn, reduced, or limited in any way after the effective date of this CONTRACT and prior to normal completion, the DEPARTMENT may terminate the CONTRACT under the "Termination for Convenience" section, without the ten-calendar day notice requirement. In lieu of termination, the CONTRACT may be amended to reflect the new funding limitations and conditions.

TERMINATION FOR CONVENIENCE – Except as otherwise provided in this CONTRACT, the DEPARTMENT may, by ten days written notice, beginning on the second day after the mailing, terminate this CONTRACT in whole or in part. If this CONTRACT is so terminated, the DEPARTMENT shall be liable only for payment required under the terms of this CONTRACT for services rendered or goods delivered prior to the effective date of termination.

TERMINATION FOR DEFAULT – The DEPARTMENT may terminate this CONTRACT for default, in whole or in part, by written notice to the CONTRACTOR if the DEPARTMENT has a reasonable basis to believe that the CONTRACTOR has:

- Failed to meet or maintain any requirement for contracting with the DEPARTMENT.
- Failed to ensure the health or safety of any client for whom services are being provided under this CONTRACT.
- Failed to perform under or otherwise breached any term or condition of this CONTRACT.
- Violated any applicable law or regulation.

If it is later determined that the CONTRACTOR was not in default, the termination shall be considered a termination for convenience.

TERMINATION PROCEDURE – Upon termination of this CONTRACT, the DEPARTMENT, in addition to any other rights provided in this CONTRACT, may require the CONTRACTOR to deliver to the DEPARTMENT any property specifically produced or acquired for the performance of such part of this agreement as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The DEPARTMENT shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the DEPARTMENT and the amount agreed upon by the CONTRACTOR and the DEPARTMENT for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services that are accepted by the DEPARTMENT, and (d) the protection and preservation of the

property, unless the termination is for default, in which case the DEPARTMENT shall determine the extent of the liability of the DEPARTMENT. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" section of this CONTRACT.

The DEPARTMENT may withhold from any amounts due the CONTRACTOR for such completed work or services such sum as the DEPARTMENT determines to be necessary to protect the DEPARTMENT against potential loss or liability.

The rights and remedies of the DEPARTMENT provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

After receipt of a notice of termination, except as otherwise directed by the DEPARTMENT, the CONTRACTOR shall:

- Stop work under the agreement on the date and to the extent specified in the notice.
- Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete such portion of the work not terminated.
- Assign to the DEPARTMENT the rights, titles, and interest of the CONTRACTOR under any orders and subcontracts. The DEPARTMENT has the right to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- Settle all outstanding liabilities and claims arising out of such termination of orders and subcontracts, with the approval or ratification of the DEPARTMENT to the extent required.
- Transfer title to the DEPARTMENT and deliver any property, which, if the CONTRACT had been completed, would have been required to be furnished to the DEPARTMENT.
- Complete performance of such part of the work not terminated by the DEPARTMENT.
- Take such action as may be necessary for the protection and preservation of the property related to this agreement that is in the possession of the CONTRACTOR and in which the DEPARTMENT has or may acquire an interest.

TREATMENT OF ASSETS –

- Title to all property financed or furnished by the DEPARTMENT shall remain in the DEPARTMENT. Title to all property purchased by the CONTRACTOR, for which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this CONTRACT, shall pass to and vest in the DEPARTMENT upon delivery of such property to the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under the CONTRACT, shall pass to and vest in the DEPARTMENT upon (i) issuance of use of such property in the performance of this CONTRACT, or (ii) commencement of use of such property in the performance of this CONTRACT, or (iii) reimbursement of the cost thereof by the DEPARTMENT in whole or in part, whichever occurs first.
- Any property of the DEPARTMENT furnished to the CONTRACTOR, shall, unless otherwise provided herein, or approved by the DEPARTMENT, be used only for the performance of this CONTRACT.
- Property records must be maintained that include a description of the property, a serial number or other identification number, the acquisition date, cost of the property, percentage of federal or state participation (under this CONTRACT) in the cost of the property, the location, and any ultimate disposition data including the date of disposal and sale price of the property.
- If the CONTRACTOR is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- When original or replacement equipment acquired under this CONTRACT is no longer needed for the original project or program or for other authorized activities currently or previously supported by state funds, as determined by the DEPARTMENT, disposition of the equipment will be made in accordance with RCW 43.19.1919.
- The CONTRACTOR shall be responsible for any loss or damage to property of the DEPARTMENT which results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- If any DEPARTMENT property is lost, destroyed, or damaged, the CONTRACTOR shall notify the DEPARTMENT and take all reasonable steps to protect the property from further damage.
- The CONTRACTOR shall surrender to the DEPARTMENT all property of the DEPARTMENT prior to settlement upon completion, termination, or cancellation of this agreement.

WAIVER OF DEFAULT – Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Waiver shall not be construed to be a modification of the terms of the CONTRACT unless stated to be such in writing, signed by the DEPARTMENT.